

February 4, 2002

TAXABILITY OF PUBLICLY OWNED PROPERTY AT AIRPORTS

Purpose. To advise assessors regarding the taxability of property owned by airport authorities or other governmental subdivisions. All assessors shall follow this Directive in determining whether to issue the notice of intent to tax required by Nebraska law to impose property taxes on publicly owned property not used or being developed for use for a public purpose as defined in Neb. Rev. Stat. § 77-202(1).

Procedure and Implementation: 1999 Neb. Laws. LB 271 ("LB 271"), passed in 1999 and operative on January 1, 2001, sought to implement the provision of Nebraska Constitution Article VIII, section 2, permitting the Legislature to impose property taxes on some or all property owned by the state or its political subdivisions. The Legislature intended to continue to exempt property "...to the extent used or being developed for use by the state or governmental subdivision for a public purpose". Public purpose was defined by the Legislature as the use of the property to:

- (i) provide public services with or without cost to the recipient, including the general operation of government, public education, public safety, transportation, public works, civil and criminal justice, public health and welfare, developments by a public housing authority, parks, culture, recreation, community development, and cemetery purposes, or
- (ii) to carry out the duties and responsibilities conferred by law with or without consideration. Public purpose does not include leasing of property to a private party unless the lease of the property is at fair market value for a public purpose.

Statutorily then, publicly owned property, to remain exempt from property taxes, must be used or being developed for use for a public purpose, whether the property is being used by the political subdivision or whether the property is leased to a third party.

The Department of Property Assessment and Taxation issued regulations, found at Title 350, Nebraska Administrative Code, Chapter 15, effective in March of 2001, to try to further define the concepts addressed in the statute. However, in the first year of the implementation of LB 271, property owned by airport authorities, typically leased to third parties, provided significant difficulties for assessors in determining whether the property was being used for a public purpose. One problem was the existence of separate, previously enacted statutes dealing with airport facilities that classified a variety of uses of such property, some of which were broader than contained in Neb. Rev. Stat. § 77-202(1), as being for a public purpose. Subsequently, the

Legislature enacted 2001 Neb. Laws, LB 173, a statute designed to make those statutory descriptions of “public purpose” subordinate to the definition of public purpose contained in Neb. Rev. Stat. § 77-202. Despite the existing statutory enactments, further guidance to assessors in dealing with the determination of the taxability of property located at airports appears to be necessary in order to make treatment of such property for property tax purposes consistent across the state.

TERMS DEFINED

Aviation facilities shall mean runways, hangars, and other facilities used for the service of commercial or general aviation aircraft, control towers, terminal and other facilities used for the comfort and accommodation of air travelers in either commercial or general aviation, restricted landing areas and required clear zones necessary for the safe take-off and landing of airplanes.

Service of commercial or general aviation aircraft shall mean work performed on aircraft related to the safe operation of the aircraft.

Hangars shall mean buildings or structures in use for the storage of or service of commercial or general aviation aircraft.

Clear zones shall mean areas in proximity to runways at aviation facilities required by federal or state law, rule or regulation to remain unimproved to ensure the safe take-off and landing of aircraft. Clear zones shall not include land not necessary for the safe operation of aircraft, held for future airport development or in use for other non-aviation purposes. For the purposes of this Directive, agricultural or horticultural land in production within the area encompassed by a clear zone shall be deemed unimproved and therefore, exempt from tax.

TAXABILITY

Aviation facilities, owned by the state, airport authority, or other governmental subdivision, shall be deemed to be used for a public purpose and shall be exempt from property taxes and in lieu of taxes. Aviation facilities leased by the state, airport authority or governmental subdivision to a private individual or entity are also deemed to be exempt from property taxes and in lieu of taxes, provided they are leased at fair market value and are used for a public purpose. For the definition of “lease at fair market value”, see the Department’s regulation, Title 350, Chapter 15, Property Owned by the State and Governmental Subdivisions, Regulation 15-002.19. For the purposes of this Directive, the term “used” shall mean the dominant or primary use of the property, such that an incidental, nonpublic purpose use of the property shall not affect the tax status of the property.

The determination of whether a property or a distinct portion of a property is being used or developed for use for a public purpose under this Directive shall not be affected by whether the use of the property, either through lease payments to the governmental subdivision or receipts generated by the use of the property, generates income for the use of the governmental

subdivision. In other words, the generation of income from the use of the property will not convert a nonpublic purpose use of the property to a tax exempt public purpose.

Bonded indebtedness incurred by an airport, airport authority, or any governmental subdivision shall not exempt any governmental property owned by the state or political subdivision from tax when such property does not meet the definition of aviation facility or is not used for another public purpose as defined by Neb. Rev. Stat. § 77-202 or Title 350, Nebraska Administrative Code, Chapter 15, Property Owned by the State and Governmental Subdivisions.

APPROVED

Catherine D. Lang
Property Tax Administrator
February 4, 2002